



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: February 17, 2009

CBCA 1315

BOBBY ABERNETHY,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Bobby Abernethy, pro se, Verona, VA.

Kathleen K. Barksdale, Office of Regional Counsel, General Services Administration,
Philadelphia, PA, counsel for Respondent.

Before Board Judges **BORWICK**, **VERGILIO**, and **KULLBERG**.

KULLBERG, Board Judge.

Appellant, Mr. Bobby Abernethy, brings this appeal of his claim in the amount of \$118.72 for the costs of repairs to a truck that he purchased at an auction under the terms of a General Services Administration (GSA) contract. GSA, the respondent, moves for summary relief in this appeal on the grounds that the cost of such repairs is not recoverable under the terms of the warranty provisions in Mr. Abernethy's contract. We grant GSA's motion and deny the appeal.

Facts

On June 24, 2008, Mr. Abernethy purchased at Manheim's Baltimore Washington Auto Auction in Elkridge, Maryland, under GSA contract GS03F08FBE6061 (contract), a 2003 Chevrolet 2500K Suburban truck (truck) for \$6800. Appeal File, Exhibits 1, 2, 5-7, 10, 11.¹ The mileage shown on the truck's odometer was 68,685 miles. Exhibit 10.

On the day of the purchase, Mr. Abernethy signed a bidder registration sheet which provided in relevant part the following:

I, the undersigned, agree that any bids submitted by me will be subject to the General Sale Terms and Conditions (Standard Form 114C) and any Special Terms and Conditions applicable to this sale, copies of which I have received or have been made available to me. It is my understanding that, if am a successful bidder, full payment is required by 5:00 pm on June 24, 2008 and property is to be removed, after payment, by 5:00 pm, June 24, 2008.

Exhibit 3. The terms and conditions for the vehicles to be sold, which included the truck Mr. Abernethy purchased, stated the following:

The Government warrants to the original purchaser that the property listed in the invitation for bids will conform to its description. If a misdescription is determined before removal of the property, the Government will keep the property and refund any money paid. If a misdescription is determined after removal, the Government will refund any money paid if the purchaser takes the property at his or her expense to a location specified by the Contracting Officer. No refund will be made unless the purchaser submits a written notice to the Contracting Officer within 15 calendar days of the date of removal that the property is misdescribed and maintains the property in the same condition as when removed. After property has been removed, no refund will be made for shortages of property sold by the "LOT." This warranty is in place of all other guarantees and warranties, express or implied. The Government does not

¹ All exhibits are found in the appeal file, unless otherwise noted.

warrant the merchantability of the property or its fitness for any use or purpose. The amount of recovery under this provision is limited to the purchase price of the misdescribed property. The purchaser is not entitled to any payment for loss of profit or any other money damages, special, direct, indirect, or consequential.

Exhibit 2. The terms and conditions of the sale also stated: “Any oral statement or representation by any representative of the U.S. Government or its agent, changing or supplementing the offering or contract or any condition thereof, is unauthorized and shall constitute no right for the bidder or purchaser.” *Id.*

Upon starting the truck after purchasing it, Mr. Abernethy noticed a warning light on the dashboard, which indicated that the brake booster needed to be serviced. Exhibits 8, 9. In order to correct the problem with the brake booster warning light, Mr. Abernethy had the truck’s instrument cluster reprogrammed on July 10, 2008, at a cost of \$118.72,² and on July 11, 2008, he submitted a claim to the contracting officer for the cost of that repair. Exhibit 9. The contracting officer’s decision dated July 23, 2008, denied the claim. Exhibit 1. Mr. Abernethy timely appealed the denial of his claim.

Discussion

The Government has moved for summary relief in this appeal. This Board recognizes the following when deciding such a motion:

Summary relief is this “Board’s analogous procedure to summary judgment in court” *GE Capital Information Technology Solutions-Federal Systems v. General Services Administration*, GSBCA 15467, 01-2 BCA ¶ 31,445, at 155,306. It is well recognized that granting summary judgment is only appropriate where there is no genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). . . . The moving party has the initial responsibility of stating the basis for its motion and “identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any,’ which it believes demonstrates the absence of a genuine issue of material

² Other repairs to the truck included replacing the brakes and rotors and repairing the power seat, but Mr. Abernethy submitted no claim for those repairs. Exhibit 12.

fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The nonmoving party is then required to “go beyond the pleadings and . . . designate ‘specific facts showing that there is a genuine issue for trial.’” *Id.* at 324.

Navigant SatoTravel v. General Services Administration, CBCA 449, 08-1 BCA ¶ 33,821, at 167,403.

The issue in this appeal is whether the terms of the contract under which Mr. Abernethy purchased the truck allows reimbursement for the \$118.72 that he spent on reprogramming the truck’s instrument cluster. Under the terms of the warranty that applied to the sale of the truck, Mr. Abernethy did not have “the option of undertaking repairs . . . and then obtaining payment from GSA for the cost of the repairs.” *Gaven L. Rouse v. General Services Administration*, GSBCA 15993, 03-1 BCA ¶ 32,210, at 159,301. The terms of the warranty for the truck were limited to circumstances in which a refund of the purchase price could be requested upon notifying the contracting officer and returning the vehicle in the same condition within fifteen days of the date of purchase. Mr. Abernethy has represented that he was offered the opportunity by the contracting officer to return the truck before it was repaired, but he declined to do so. Appellant’s Response to Motion for Summary Relief at 1. The contracting officer, therefore, properly denied Mr. Abernethy’s claim in that no additional damages such as the cost of repairs were allowed under the terms of the warranty. *Patrick C. Sullivan v. General Services Administration*, CBCA 936, 08-1 BCA ¶ 33,820, at 167,400.

Mr. Abernethy contends that the brake booster warning light on the truck’s dashboard was a safety defect that should have been repaired before the sale. Exhibit 12. This Board has recognized that the purchaser of a used vehicle at a GSA auction assumes the risk that repairs may be necessary and has no right to expect reimbursement for unexpected repairs. *See Joseph M. Hutchinson v. General Services Administration*, CBCA 752, 08-1 BCA ¶ 33,804, at 167,340. The contract provided no warranty as to merchantability or fitness for purpose of the truck. As discussed above, Mr. Abernethy’s remedies under the warranty provisions of the contract did not include recovery of the cost of repairs. While Mr. Abernethy may have expected that the brake booster warning light should have been remedied before the auction, the contract made no warranty as to the condition of the vehicle, and no recovery is allowed for that reason.

Finally, Mr. Abernethy has alleged that after he advised the contracting officer of the problem with the brake booster warning light, he asked her “if she would pay to fix the vehicle since it was a safety problem . . . [and] [s]he said she would if it wasn’t too much.” Appellant’s Response to Motion for Summary Relief at 1. The contracting officer was

subject to the terms and conditions of Mr. Abernethy's contract, which specifically stated that verbal modifications to the contract, which included its warranty provisions, were unauthorized. *See Coleridge D. Henri v. General Services Administration*, GSBCA 13991, 97-2 BCA ¶ 29,187, at 145,162. The terms and conditions of the contract's warranty provision limited Mr. Abernethy's remedies to those previously discussed, and the contracting officer's alleged assurance that the Government would pay for repairs, depending upon the cost, would not only have been unauthorized under the terms of the contract, but also, "could well represent an illegal expenditure of Government funds." *Magdi A. Risk v. General Services Administration*, GSBCA 13572, 96-2 BCA ¶ 28,401, at 141,820. Even if the contracting officer's statements were true as alleged by Mr. Abernethy, those statements could not have obligated the Government to pay for any of Mr. Abernethy's claimed repairs, and there is, consequently, no material issue of fact that GSA assumed any obligation to pay for repairs to his truck.

We find, therefore, that there is no material issue of fact as to the matters at issue in this case. The cost of the repairs subsequent to the purchase of the truck are not covered by the warranty provisions of the contract. In the absence of any material issue of fact as to Mr. Abernethy's entitlement to recover his repair costs in this appeal, we grant GSA's motion for summary relief.

Decision

The Government's motion for summary relief is granted. The appeal is **DENIED**.

H. CHUCK KULLBERG
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

JOSEPH A. VERGILIO
Board Judge